IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 13TH AUGUST 2007 / 22ND SRAVANA 1929

FAO.No. 240 of 2007()

AGAINST THE ORDER DATED 27/06/2007 IN IA. 680 /2007 IN OS.75/2007 of SUB COURT, CHERTHALA
.....

: APPELLANT IN FAO RESPONDENT NO.3 IN I.A.

M/S. HINDUSTAN UNILEVER LTD., A COMPANY
REGISTERED UNDER THE COMPANIES ACT AND HAVING ITS REGISTERED OFFICE AT 165-166 BACKBAY RECLAMATION, MUMBAI AND HAVING ITS FACTORY AT KUTHIATHODE, THURAVOOR, ALAPPUZHA-688 53D2 AND REPRESENTED BY ITS AUTHORIZED REPRESENTATIVE SHRI M.A. JOSEPH.

BY ADV. SRI.S.V.BALAKRISHNA IYER (SR.)
SRI.K.JAYAKUMAR
SRI.P.B.KRISHNAN

RESPONDENTS: PETITIONER AND RESPONDENT NO.2 IN I.A.
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1. CLASSIQUE CONSTRUCTIONS,REPRESENTED BY ITS PROPRIETOR, P.H. THOAMAS THARAKAN, XX/358, EZHUPUNNA, ALAPUZHA.

2. M/S. TEMPTATION FOODS LTD.(TFL),4, UNITY HOUSE, 2ND FLOOR,8, MAMA PARAMANANDA MARG, OPERA HOUSE, MUMBAI.

BY ADV.SRI.BABU PAUL.

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 13/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KURIAN JOSEPH & T.R.RAMACHANDRAN NAIR, JJ.

F.A.O.No.240 of 2007

Dated 13th August, 2007.

J U D G M E N T

Kurian Joseph, J.

This appeal is directed against the order dated 27.6.2007 in I.A.680/07 in O.S.75/07 on the file of the Sub Court, Cherthala, whereby the trial court made a conditional order of attachment absolute. According to the appellant, the claimant had not made out a case for attachment under Order 38 Rule5. That is vehemently disputed by the learned counsel appearing for the respondents. Be that as it may, it is seen that what is made absolute is only a conditional attachment. Learned senior counsel appearing for the appellant on instruction submits that the appellant is prepared to furnish bank guarantee for the plaint claim and on furnishing bank guarantee as above, the attachment may be lifted. Since the order is a conditional attachment, we do not find any reason to refuse the submission. Accordingly, the appeal is allowed as follows :-

(1) On the appellant furnishing bank guarantee for the amount for which the appellant was called upon to furnish security, the attachment shall stand lifted. Needless to say that the bank

guarantee is in favour of the trial court.

(2) On lifting the attachment as above, the trial court will also recall communication, if any which has been sent to any office, regarding the attachment.

(3) The bank guarantee shall be kept alive till the disposal of the suit.

I.A.2936/07 : Dismissed.

KURIAN JOSEPH, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.

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KURIAN JOSEPH &

T.R.RAMACHANDRAN NAIR, JJ

L.A.A. NO. OF 2004

J U D G M E N T

Dated 13th August, 2007.